

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF**



75-1139<sup>B</sup><sub>PLS</sub>

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
UNITED STATES OF AMERICA

Docket No. 75-1139

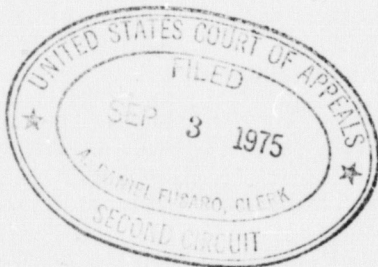
Appellee

-against-

WILLIE L. HARRINGTON

Defendant-Appellant  
-----X

BRIEF ON BEHALF OF DEFENDANT-APPELLANT  
PURSUANT TO ANDERS v. CALIFORNIA



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PRELIMINARY STATEMENT UNDER  
SECOND CIRCUIT RULE 28

The judgment of conviction herein was rendered on April 4, 1975 after a jury trial before United States District Judge THOMAS C. PLATT in the United States District Court for the Eastern District of New York, which found the defendant guilty as charged on February 13, 1975 on an indictment of ten counts each charging a violation of Title 18, United States Code, Section 1708. The defendant appellant was sentenced to 2 years imprisonment on each count, said sentence to run concurrently.

STATEMENT OF THE ISSUE

The sole issue in this case is whether there are any non-frivolous issues on appeal.

STATEMENT OF THE CASE

The defendant-appellant was indicted on indictment No. 74 CR 228, charging in ten separate counts with possession of the contents of a letter stolen from the United States Mail, knowing the same to have been stolen, in violation of Title 18, United States Code, Sec. 1708. The appellant was tried in the United States District Court for the Eastern District of New York before HON. THOMAS C. PLATT, United States District Judge, and a jury. The defendant was found guilty as charged on all ten counts, and on April 4, 1975 was sentenced to a term of 2 years on each count, said sentences to run concurrently.

The Government called AUGUST LOPEZ, the official of the Department of Social Services of the City of New York who was charged with the duty of super-



vising the mailing of welfare checks to the welfare clients in November, 1973. He identified the ten checks referred to in the indictment as being welfare checks and then testified as to the mailing procedures followed at the time these checks were issued. He then testified as to the procedures of the Department of Social Services when the non-receipt of checks was reported. The ten checks were put in evidence and the witness testified that as to these checks he assume they were mailed by his office. (TR. 19-34a)

The Government presented ten witnesses, all persons designated as payees on the ten separate checks in evidence issued to them by the Department of Social Services of the City of New York. Each witness testified that their endorsement on the back of the checks was not made by them and that the second endorsement "Bill Harrington" under the forged endorsement of their names was not put on the check with their authorization nor did they know the defendant-appellant seated in the courtroom. Each further testified as to the non-receipt of the checks in question and identified affidavit forms made by them to the Department of Social Services reporting the checks stolen. (TR. 52, 59, 66, 70, 76, 80, 84, 87, 92).

Postal Inspector DAVID AMBOY testified that he had traced the checks to the First National City Banks in Brooklyn where his investigation revealed that they had been deposited in the account of one BILL HARRINGTON. (TR. 113-114). He placed the defendant-appellant under arrest on November 9, 1973 at the bank and found in his possession a check drawn to the order of case for \$2,000.00 and signed "Bill Harrington". (TR. 120-121).

The operations supervisor of the bank testified as to the opening of a checking

account on November 29, 1972, in the First National City Bank on Livingston Street in Brooklyn by one Billy Harrington (TR. 99). He identified the endorsements "Bill Harrington" on the back of the checks in evidence, based on his 15 years of experience as a bank teller, as having been made by the person who opened the checking account in the bank. (TR. 105) Further he stated that the maker's signature and the endorsement "Bill Harrington" on the check to cash recovered from appellant at his arrest were made by the Billy Harrington who opened the checking account.

The defendant-appellant took the stand and admitted that he had endorsed the ten stolen checks in evidence and made out the deposit slips for them so they could be deposited in his checking account in the Livingston Street Branch of the First National City Bank. He stated that he had received the ten stolen checks from one CARL SANTOS whom he had met in a bar in New York City and who told him he was in the checking business. (TR. 18c). He said he left the bar with SANTOS and went to a men's room toilet in the Port Authority building where he entered a toilet booth, sat down on the bowl and endorsed the checks. (TR. 61c-62c) He said he gave them to SANTOS for deposit in his, the defendant-appellant's, checking account in First National City Bank. He explained the check for \$2,000.00 found in his possession on the date of his arrest by testifying that he was to withdraw the money, take ten percent as his share and deliver the balance to SANTOS. He admitted that he didn't know the address of SANTOS but only met him in a bar.

After summation and charge the jury returned a verdict of guilty on all counts.



POSSIBLE ISSUES ON APPEAL

The only possible issue on the appeal is whether or not the Government proved that the stolen checks had been placed in the mails.

The official of the Department of Social Services identified the checks as having been part of a number of checks mailed on October 31, 1973. Admittedly, he could not identify these checks as individually having been placed in the mails other than to state the procedures which applied on that date, and that the checks prepared and dated November 1st, 1973 had been mailed. (TR. 25-26) This issue was raised in WEBB v. U.S. (CA10), 1965, 347 F.2d 363 where the court held that proof that the welfare department followed routine procedures in the preparation and mailing of welfare checks was sufficient to support a permissible inference that the check had been stolen from the United States mail. The testimony of this witness was sufficient to permit the jury to arrive at the conclusion that the checks had been mailed. In short the jury could make a common sense inference from the proven facts (UNITED STATES v. OWENS 420 F.2d 305, 2d Cir. 1970; UNITED STATES v. HINES, 256 F.2d , 561, 564, 2d Cir, 1958).

That the checks were not received by the payees was proven beyond the shadow of a doubt.

The question of whether or not the defendant-appellant knew that the checks were stolen put the duty on defendant-appellant to explain what they were doing in his possession. He admitted that they were deposited in his account several days after they were stolen, and gave an explanation of his dealings with one SANTOS to explain how they came into his account. (TR. 18c, 54c, to 57c). The explanation was in-





credible, particularly the endorsement of the checks in the men's toilet of a public building and the statement that this was part of a check cashing business (TR. 57c). The jury properly resolved this issue against the defendant.

All of the other issues were clearly proven by the government and were issues of fact for the jury. There are no non-frivolous issues on which to appeal.

CONCLUSION

For the above-stated reasons, there are no non-frivolous issues which can be raised on appeal; accordingly it is respectfully requested that JOHN C. CORBETT be relieved as counsel on this appeal.

Respectfully submitted,

JOHN C. CORBETT  
Attorney for Defendant-Appellant





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